

DARRYL M. WOO (CSB NO. 100513)  
[dwoo@fenwick.com](mailto:dwoo@fenwick.com)  
CHARLENE M. MORROW (CSB NO. 136411)  
[cmorrow@fenwick.com](mailto:cmorrow@fenwick.com)  
PATRICK E. PREMO (CSB NO. 184915)  
[ppremo@fenwick.com](mailto:ppremo@fenwick.com)  
BRYAN A. KOHM (CSB NO. 233276)  
[bkohm@fenwick.com](mailto:bkohm@fenwick.com)  
FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: (415) 875-2300  
Facsimile: (415) 281-1350

Attorneys for Defendants and Counterclaimants  
AMBU A/S, AMBU INC., and AMBU LTD.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE LARYNGEAL MASK COMPANY LTD.  
and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., and AMBU LTD.,

Defendants,

AND RELATED COUNTERCLAIMS.

Case No. 3:07-cv-01988 DMS (NLS)

Jury Trial Demanded

**DEFENDANTS' MOTION FOR LEAVE TO  
ELECTRONICALLY FILE DEFENDANTS'  
MOTION TO COMPEL ON JULY 14, 2009**

Judge Dana M. Sabraw  
Magistrate Judge Nita L. Storms

Defendants and Counterclaimants Ambu A/S, Ambu Inc., and Ambu Ltd. (collectively  
“Ambu”) hereby respectfully submit this Motion for Leave to Electronically File Defendants’  
Motion to Compel on July 14, 2009.

Ambu apologizes to the Court and to opposing counsel for the delays it experienced in the  
e-filing process in preparing and filing the redacted form of its Memorandum of Points and  
Authorities in Support of Motion to Compel and the associated Application to File Under Seal.  
Ambu’s counsel sought to comply with the proper procedures concerning filing briefs and other  
papers under seal, and to avoid merely filing the entirety of Ambu’s Memorandum of Points and

1 Authorities in Support of Motion to Compel under seal, which Ambu believed would be in  
2 violation of the Court's e-filing procedures. As set forth in the accompanying Declaration of  
3 Patrick E. Premo, due to the length of the brief and number and size of exhibits, the preparation of  
4 the redacted form of the memorandum and exhibits for public filing became delayed such that they  
5 were filed at 4:17 a.m. and 4:44 a.m., respectively, on July 14, 2009 rather than before midnight,  
6 July 13 as intended. Specifically, Ambu first attempted to file all of the exhibits together but  
7 realized that one of the exhibits was too large to file and elected to file it manually. Ambu then  
8 attempted to e-file the memorandum, declaration and exhibits together but received an error  
9 message, causing Ambu to again go through the lengthy process of uploading all of the papers and  
10 exhibits. Ambu ultimately had to file the memorandum, declaration and exhibits separately.

11 Ambu takes full responsibility for the delays associated with electronic filing and  
12 respectfully requests that this Court consider the Motion to Compel. Ambu has attempted to be  
13 judicious in burdening the Court with discovery motions, and the present motion is Ambu's first  
14 motion relating to a discovery dispute since the claim construction dispute in November 2008. In  
15 addition, part of the delay encountered with respect to the present Motion to Compel resulted  
16 from Ambu's decision to remove numerous requests for the Court to consider certain disputes, so  
17 as to limit Ambu's requests for Court intervention to only critical matters.

18 Ambu further submits that consideration of its Motion to Compel will not result in  
19 prejudice to any party, as delivery of the unredacted version to opposing counsel was timely  
20 completed and served at 5:02 a.m. on July 14, 2009, prior to the start of the next business day. The  
21 after-hours filing of the redacted version should not impact the parties or the Court's preparation or  
22 consideration of Ambu's Motion to Compel, given that it was filed prior to the start of the next  
23 business day on July 14, 2009. Demonstrating that the timing of Ambu's filing will not prejudice  
24 LMA, LMA served its unredacted version of its memorandum and confidential materials  
25 supporting its own motion to compel at 1:26 a.m. Ambu served its unredacted version of  
26 documents approximately three and a half hours later at 5:02 a.m.

27 Counsel for Ambu has contacted LMA's counsel to inquire whether LMA opposes this  
28 motion, and LMA informed Ambu that it does not oppose this motion. Ambu also does not

1 oppose Plaintiff's *Ex Parte* Motion to File Over-Sized Brief in Support of LMA's Motion to  
2 Compel.

3 For the reasons set forth above and in the Premo Declaration, Ambu respectfully requests  
4 that the Court grant this motion.

5 Dated: July 14, 2009

FENWICK & WEST LLP

8 By: /s/ **Patrick E. Premo**  
9 Patrick E. Premo

10 Attorneys for Defendants and Counterclaimants,  
11 AMBU A/S, AMBU INC., AND AMBU LTD.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5.2 on July 14, 2009.

By: /s/ Patrick E. Premo  
Patrick E. Premo  
E-mail: ppremo@fenwick.com

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO